

Proposed Action on Regulations

For information concerning citizen participation in the regulation-making process, see inside front cover.

Symbol Key

- Roman type indicates existing text of regulation.
- *Italic type* indicates proposed new text.
- [Single brackets] indicate text proposed for deletion.

Promulgation of Regulations

An agency wishing to adopt, amend, or repeal regulations must first publish in the Maryland Register a notice of proposed action, a statement of purpose, a comparison to federal standards, an estimate of economic impact, an economic impact on small businesses, a notice giving the public an opportunity to comment on the proposal, and the text of the proposed regulations. The opportunity for public comment must be held open for at least 30 days after the proposal is published in the Maryland Register.

Following publication of the proposal in the Maryland Register, 45 days must pass before the agency may take final action on the proposal. When final action is taken, the agency must publish a notice in the Maryland Register. Final action takes effect 10 days after the notice is published, unless the agency specifies a later date. An agency may make changes in the text of a proposal. If the changes are not substantive, these changes are included in the notice of final action and published in the Maryland Register. If the changes are substantive, the agency must repropose the regulations, showing the changes that were made to the originally proposed text.

Proposed action on regulations may be withdrawn by the proposing agency any time before final action is taken. When an agency proposes action on regulations, but does not take final action within 1 year, the proposal is automatically withdrawn by operation of law, and a notice of withdrawal is published in the Maryland Register.

Title 05 DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Subtitle 13 NEIGHBORHOOD BUSINESS DEVELOPMENT

05.13.01 Business Development Program

Authority: Housing and Community Development Article, §6-308(a)(2), 6-332
Annotated Code of Maryland

Notice of Proposed Action [19-135-P]

The Secretary of Housing and Community Development proposes to repeal existing Regulations .01—.19 and adopt new Regulations .01—.14 under COMAR 05.13.01 Business Development Program.

Statement of Purpose

The purpose of this action is to conform the regulations to Ch. 211, Acts of 2019, and Ch. 482, Acts of 2016, and to prescribe the policies, procedures, and authorization for the origination of loans and other financial assistance provided for qualified businesses in the State of Maryland through the Business Development Program, operated by the Department of Housing and Community Development.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. The proposed amendments will make it possible for the Maryland Department of Housing and Community Development (DHCD) to offer more types of loans and financial assistance than are currently permitted under the existing

regulations. Recent statutory changes in 2016 expanded DHCD's ability to provide business project loans in priority funding areas and eligible opportunity zones. New products may include loans for business owners who lack resources or are otherwise not able to obtain a competitive interest rate when starting or expanding a business. These additional products will allow new and existing businesses new opportunities by providing access to competitive loans that they might not be able to obtain from the existing private market or the U.S. Small Business Administration.

II. Types of Economic Impact.

- A. On issuing agency:
B. On other State
agencies:
C. On local
governments:

Revenue (R+/R-)

Expenditure
(E+/E-)

Magnitude

(R+)

Indeterminable

(R+)

Indeterminable

NONE

Benefit (+)
Cost (-)

Magnitude

- D. On regulated
industries or trade groups:

(+)

Indeterminable

- E. On other industries or
trade groups:

NONE

- F. Direct and indirect
effects on public:

Indeterminable

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

A. DHCD will receive revenue from the origination fees and loan repayments associated with expanded lending under the program. The number of and amounts of the loans that will be originated are indeterminable. DHCD will incur some minor administrative costs, but these costs will be less than the revenue generated.

Administrative costs are already budgeted. No additional costs would be incurred administratively because of these regulations.

B. DHCD anticipates that the regulation changes will increase the number of loans for eligible businesses by public and private lenders since DHCD's loans will make more projects financially feasible. The actual amount of the increase in loans is indeterminable.

D. Private lenders should benefit by the proposed regulations because additional businesses may be eligible for loans originated by DHCD. The actual amount of the increase in loans made by private lenders is indeterminable.

F. The proposed regulations are expected to result in additional types of loans for business projects that are not currently being served. The proposed regulations are expected to result in an increase in business projects and growth by expanding the availability of loans. The actual increase is indeterminable.

Economic Impact on Small Businesses

The proposed action has meaningful economic impact on small businesses. Analysis of this economic impact follows. The proposed action will have a positive economic impact on businesses by expanding the availability of capital that is needed for the establishment and expansion of businesses.

Impact of Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Matthew Heckles, Director of Community Development Administration, Department of Housing and Community Development, 7800 Harkins Road, Lanham, Maryland 20706, or call 301-429-7855. Comments will be accepted through August 19, 2019. A public hearing has not been scheduled.

.01 General.

This chapter prescribes the policies, procedures, and authorizations for providing financial assistance to eligible small businesses, nonprofit organizations, and microenterprises from the Neighborhood Business Development Fund and for administering the Business Development Program, also known as the Neighborhood Business Works Program.

.02 Objectives.

The purposes of the Program as set forth in the Act are:

A. In priority funding areas or eligible opportunity zones, to:

- (1) Help develop, redevelop, or expand small businesses and microenterprises;
- (2) Stimulate investment by the private sector;
- (3) Invest in revitalization projects for small businesses and microenterprises; and
- (4) Stimulate political subdivisions to participate in developing and expanding small businesses and microenterprises; and

B. In food deserts or parts of priority funding areas or eligible opportunity zones that serve food deserts, to help create small businesses and other food-related enterprises that provide fresh fruits, vegetables, and other healthy foods to residents in the food desert.

.03 Definitions.

A. In this chapter, the following words have the meanings indicated and as defined in the Act.

B. Terms Defined.

- (1) "Act" means Housing and Community Development Article, Title 6, Subtitle 3, Annotated Code of Maryland.
- (2) "Business" means a commercial or industrial enterprise.

(3) "Business project" means a project that is:

(a) Both:

(i) Located in a priority funding area or eligible opportunity zone; and

(ii) Acquired, owned, developed, constructed, reconstructed, rehabilitated, or improved by a person or an entity for the purposes of carrying on a business whether or not for profit; or

(b) Eligible for funding from the Fund.

(4) "Department" means the Department of Housing and Community Development, a principal department of the State.

(5) "Development costs" means the costs incurred to develop, redevelop, or expand a business project and include the costs of:

(a) Necessary studies, surveys, plans, and specifications;

(b) Architectural, engineering, or other special services, including flood plain studies, environmental audits, and critical area or wetland assessments;

(c) Land and improvements;

(d) Site preparation;

(e) Construction, reconstruction, and rehabilitation;

(f) Machinery, equipment, and furnishings;

(g) Essential operating costs, including working capital and initial occupancy expenses;

(h) Indemnity and surety bonds and premiums on insurance;

(i) Temporary relocation expenses; and

(j) Other costs determined to be acceptable by the Department.

(6) "Eligible opportunity zone" means an area designated as a qualified opportunity zone under §1400 Z-1 of the Internal Revenue Code that is located in Allegany County, Garrett County, Somerset County, or Wicomico County.

(7) "Financial assistance" means any form of grant, loan, loan participation, assurance, guarantee, or other credit enhancement, reduction in the principal obligation of or in the rate of interest payable on a loan or portion of a loan, and prepayment of interest on a subordinate or superior loan or portion of a loan.

(8) "Financial assistance documents" means those documents executed by an approved applicant and the Department which set forth the terms and conditions of financial assistance under the Program.

(9) "Food desert" means that part of a priority funding area or eligible opportunity zone designated by the Secretary in accordance with COMAR 05.13.06.05.

(10) "Food desert project" means a project that is located in a food desert or a part of a priority funding area or eligible opportunity zone that serves a food desert for the purpose of providing fresh fruits, vegetables, and other healthy foods to residents in the food desert.

(11) "Fund" means the Neighborhood Business Development Fund under Housing and Community Development Article, §6-310, Annotated Code of Maryland.

(12) Local Jurisdiction.

(a) "Local jurisdiction" means:

(i) A municipal corporation subject to the provisions of the State Constitution, Article XI-E, if a project is located entirely within the boundaries of the municipal corporation; or

(ii) Any of the 23 counties of this State and the City of Baltimore within which a project is located.

(b) "Local jurisdiction" includes each local jurisdiction within which any part of a project is located, if part of the project is located within one local jurisdiction while the remainder of the project is located in a different local jurisdiction.

(13) "Microenterprise" means a business that employs a number of employees or has annual gross receipts no greater than the limits set forth by the U.S. Small Business Administration for microenterprises.

(14) "Mixed use" means a use which includes commercial, retail, residential or any other uses approved by the Department.

(15) "Nonprofit organization" means a corporation, foundation, or other entity that specifies in its charter or bylaws that no part of the net earnings may inure to the benefit of any private shareholder or individual holding any interest in the entity.

(16) "Priority funding area" means an area designated as a priority funding area under State Finance and Procurement Article, §5-7B-02, Annotated Code of Maryland.

(17) "Program" means the Business Development Program, also known as the Neighborhood Business Works Program.

(18) "Program funds" means monies from the Program that are used to provide financial assistance.

(19) "Project" means a project or activity which qualifies for financial assistance under the Program.

(20) "Secretary" means the Secretary of Housing and Community Development.

(21) "Small business" means a business that employs a number of employees or has annual gross receipts no greater than the limits set forth by the U.S. Small Business Administration for small businesses.

(22) "Sustainable community" means the part of a priority funding area or eligible opportunity zone that:

(a) Has been designated as a sustainable community in accordance with COMAR 05.17.02;

(b) Has been designated as a BRAC Revitalization and Incentive Zone under Economic Development Article, Title 5, Subtitle 13, Annotated Code of Maryland; or

(c) Has been designated as a transit-oriented development under Transportation Article, §7-101, Annotated Code of Maryland.

.04 Eligible Applicants.

Applicants shall meet the following minimum requirements to be eligible to apply for financial assistance under the Program:

- A. Be in good standing and qualified to do business in Maryland;
- B. Be a small business, nonprofit organization, or microenterprise; and
- C. Have the legal capacity and all necessary legal authority to incur the obligations involved in the form of financial assistance provided under the Program.

.05 Eligible Uses.

A. Financial assistance may be used for:

(1) Loans or grants for project development costs including, but not limited to:

- (a) The acquisition of:
 - (i) Land;
 - (ii) Structures;
 - (iii) Equipment; or
 - (iv) Furnishings which are or will be a part of a project;
- (b) Construction;
- (c) Reconstruction;
- (d) Rehabilitation;
- (e) Reasonable fees, as determined by the Program, for:
 - (i) Architectural services;
 - (ii) Engineering services;
 - (iii) Legal services; or
 - (iv) Other special services acceptable to the Program;
- (f) Special studies such as:
 - (i) Market and feasibility studies;
 - (ii) Property appraisals;
 - (iii) Test borings;
 - (iv) Flood plain studies;
 - (v) Critical area or wetland assessments; and
 - (vi) Other studies acceptable to the Department;
- (g) Site preparation;

(h) Environmental audits;

(i) Essential operating costs, which are related to an activity necessary to the operation of a project, including:

- (i) Working capital;
- (ii) Occupancy expenses, such as taxes, rent, tenant buildup of leased space, and inventory;
- (iii) Development costs; and
- (iv) Business expenses;
- (j) Acquisition of machinery and equipment necessary to the operation of an enterprise;
- (k) Indemnity and surety bonds;
- (l) Premiums for hazard, liability, title, and mortgage insurance;
- (m) Necessary fees, licenses, and permits related to construction, project review, and approval;
- (n) Necessary studies, surveys, plans, and specifications;
- (o) Payment and performance bonds;
- (p) Relocation expenses; and
- (q) Other necessary costs and fees acceptable to the Department;

(2) Assurances, guarantees, or any other form of credit enhancement;

(3) Reduction in the principal obligation of or rate of interest payable on a loan or portion of a loan;

(4) Prepayment of interest on a subordinate or superior loan or portion of a loan; or

(5) Fees charged by the Department.

B. Financial assistance may not be made available for any of the following businesses as a principal use of a project:

- (1) Adult bookstore, adult video shop, or other adult entertainment facility;
- (2) Check cashing facility;
- (3) Gambling facility;
- (4) Gun shop;
- (5) Liquor store;
- (6) Massage parlor;
- (7) Pawn shop;
- (8) Tanning salon; or
- (9) Tattoo parlor.

C. Financial assistance may not be made available for the furtherance of sectarian religious instruction, or in connection with the design, acquisition, or construction of any building used or to be used as a place of sectarian religious worship or instruction, or in connection with any program or department of divinity for any religious denomination, including but not limited to religious services, religious instruction, or other activities that have an explicitly religious content. A project is not eligible for financial assistance under the Program if all or any part of the project includes these activities.

.06 Eligible Projects.

In order to be eligible for financial assistance, a project shall satisfy the following requirements:

A. The project is located within the State;

B. The project is located in a priority funding area or eligible opportunity zone;

C. As determined by the Department, the financial assistance from the Program and the financial assistance requested is the least amount of money necessary to make the project financially feasible;

D. The project is ready to proceed upon receipt of financial assistance under the Program;

E. Food desert projects:

(1) Include a plan to seek out sources of Maryland-grown produce and Maryland-produced foods; and

(2) Are located in a food desert or a priority funding area or eligible opportunity zone that serves food deserts;

F. The political subdivision in which the project is located has:

(1) Approved the project by adopting a local resolution of support;

(2) Approved the project through a letter of support delivered to the Program by an authorized designee; or

(3) Allowed at least 45 days to lapse following receipt of written notice of the proposed project to the highest elected official without denying the application;

G. The operating income and expenses projected for the project show income sufficient, in the sole discretion of the Department, to repay on schedule any loans authorized or guaranteed by the Program; and

H. Upon completion, the project will be in compliance with all applicable zoning requirements and standards as well as the applicable building code of the local jurisdiction in which the project is located.

.07 Terms and Conditions of Financial Assistance.

A. The financial assistance from the Program shall be on such terms as the Department considers necessary to make the project financially feasible.

B. The Department may require an approved applicant to make a cash contribution or other form of contribution to the project.

C. Secured or Unsecured Loans.

(1) The Program may offer financial assistance as secured or unsecured loans.

(2) Secured Loans.

(a) Financial assistance in the form of a loan from the Program may be secured, at the discretion of the Department.

(b) The security shall be acceptable to the Department and may be:

- (i) A mortgage or deed of trust lien;
- (ii) A cash escrow;
- (iii) A letter of credit;
- (iv) A pledge of depository accounts;
- (v) A pledge of accounts receivable;
- (vi) An assignment of income;
- (vii) A security interest in machinery and equipment; or
- (viii) Any other form of security or collateral acceptable to the Department.

(3) Repayment. The principal and interest of a loan made or guaranteed under the Program shall:

(a) Be repayable out of revenues specified by an approved applicant;

(b) Bear interest at a rate determined to be necessary and reasonable for the project which may be as low as zero percent; and

(c) Be repayable in accordance with a schedule determined by the Department, including a deferred payment schedule.

(4) Modification. In order to facilitate the successful completion or operation of a project, the Department may modify:

- (a) The rate of interest;
- (b) The time or amount of payment; or
- (c) Any other term of a loan.

(5) Default. In the event of default, the Department shall have the right to modify the rate of interest, the time or amount of payment, or any other term of financial assistance in order to ensure repayment and achieve the purposes of the Program.

D. Insurance. At or before closing of the financial assistance, or at such other times as required by the Department, the applicant shall provide evidence acceptable to the Department that the applicant, contractor, and other parties, have obtained and maintained property, liability, and other insurance.

.08 Applications and Processing.

A. An application for financial assistance shall be submitted to the Department and shall be made upon standard forms prescribed by the Department. Each application shall:

(1) Be submitted by an eligible applicant as described in Regulation .04 of this chapter;

(2) Contain the applicant's organizational documents, including, as applicable, its articles of incorporation and bylaws, its articles of organization and operating agreement, its certificate of limited partnership and limited partnership agreement, or its partnership or joint venture agreement;

(3) Contain a description of the project;

(4) Contain a description of all sources of funding the applicant has obtained for the project;

(5) Contain sufficient information to determine that the:

(a) Project is located in a priority funding area or eligible opportunity zone;

(b) Project is eligible in accordance with Regulation .06 of this chapter;

(c) Terms and requirements of financial assistance as set forth in Regulation .07 of this chapter can be met; and

(d) Applicant is eligible in accordance with Regulation .04 of this chapter; and

(6) Contain the following additional information:

(a) The estimated number and types of jobs to be created or retained by the project;

(b) The amount, size, and types of space to be created or retained;

(c) The cost of the project;

(d) A project budget identifying all sources and uses of funds;

(e) A pro forma showing anticipated project revenue, expenses, and debt service and other indebtedness of the project;

(f) Identification of the revenues which can be used to repay the financial assistance provided by the Program; and

(g) Other and further information as the Program may request.

B. Application Evaluation.

(1) Each application submitted shall be reviewed by the Program to determine whether all of the information required under §A of this regulation is contained in the application.

(2) Upon submission of all required information, the Program shall undertake an analysis of each application and make a recommendation to the Secretary, as to whether, in accordance with this section, a project is eligible for financial assistance, the amount of financial assistance, and any special terms and conditions for a project.

(3) The Program may take the information set forth in an application and the following factors into consideration in recommending an award of financial assistance:

(a) The ratio of Program and other State funds to both private and other non-State public funds;

(b) The relationship of a project to area revitalization plans, efforts, and strategies;

(c) The capability of an applicant to administer a project;

(d) The potential of the business to serve the needs of the priority funding area or eligible opportunity zone in which it is situated; and

(e) Other factors which the Program determines are desirable in fostering commercial and economic revitalization within a local jurisdiction.

C. Geographical Distribution. In evaluating and recommending a project, the Program shall make reasonable efforts to ensure that financial assistance is equitably distributed among all of the local jurisdictions.

D. Approval of Applications.

(1) The Program shall evaluate each application for financial assistance. If the Program recommends approval of a project for financial assistance, the Program shall present the project to the Secretary. The Secretary shall approve, disapprove, or approve with modifications all financial assistance to be provided under the Program according to procedures established by the Secretary.

(2) The Secretary, in the sole discretion of the Secretary, may delegate to an authorized officer of the Department the authority to approve, disapprove, or approve with modifications financial assistance provided under the Program.

E. Rejection of Applications. If the Program does not recommend approval of a project for financial assistance, the Program shall issue a written notice of rejection with an evaluation and explanation for rejection.

F. Reconsideration.

(1) An applicant may request reconsideration of a rejection by submitting a written request, to the Secretary, which is received within 30 days following the date of the rejection notice. The request for reconsideration shall address each reason for the rejection and provide documentation supporting reasons for reconsideration of the issues. The Secretary shall respond in writing to the applicant's request for reconsideration within 30 days of receipt by the Secretary of the request for reconsideration.

(2) An initial decision or reconsideration of a decision is not a contested case within the meaning of the Administrative Procedure Act or COMAR 05.01.01.02.

(3) The Secretary, in the sole discretion of the Secretary, may delegate to an authorized officer of the Department the authority to approve, disapprove, or approve with modifications a request for reconsideration of a rejection under the Program.

G. Closing. The closing of an award of financial assistance shall be scheduled at a time acceptable to the Department and the Office of the Attorney General.

H. Disbursement of Financial Assistance. Financial assistance may be disbursed in accordance with the terms and conditions set forth in the financial assistance documents.

.09 Books and Accounts.

A. Applicants, contractors, and subcontractors shall maintain such books, accounts, and records and shall file with the Department such financial and other reports as the Department may from time to time require.

B. All of these books, accounts, and records shall be open to the inspection of representatives of the Department or other agencies of the State during reasonable working hours.

C. Books, accounts, and records of contractors and subcontractors shall be maintained and made available for inspection for 3 years past the date of termination of the contractual relationship between the contractor and the applicant.

.10 Program Administration.

A. The Program may establish from time to time detailed Program guidelines containing underwriting standards, processing requirements, and other requirements or matters relating to providing financial assistance.

B. The Program shall make a reasonable, good faith effort to make 25 percent of Program loans and grants to microenterprises.

C. In accordance with the Act, the Department shall, for each State fiscal year, reserve at least the lesser of \$5,000,000 or the annual capital appropriation for the Fund to make financial assistance available to projects located in sustainable communities.

D. The Department may charge and collect from an applicant or recipient of financial assistance under this title:

- (1) Origination, application, and processing fees; and

(2) Any other charges, fees, or reimbursements incidental to a project application or providing financial assistance.

E. The Department shall ensure that Program guidelines, fee information, and application forms are publicly available on its website and at its offices.

F. The Department may:

(1) Sell, assign, or otherwise dispose of any Program loan or revenue from a loan on terms and conditions acceptable to the Department, including selling loans at a discount;

(2) Apply the proceeds received from any sale, assignment, or other disposition to the Fund; and

(3) Pledge a program loan as security for any:

(a) Business project loan, bond, or security that is issued, made, or purchased by the community development administration of the Department under Housing and Community Development Article, Title 4, Subtitle 2, Annotated Code of Maryland; or

(b) Insurance, guaranty, or credit enhancement on a program loan or business project under Housing and Community Development Article, Title 3, Subtitle 2, Annotated Code of Maryland.

G. The maximum sale proceeds in any fiscal year may not exceed 20 percent of the total outstanding balance of loans in the Fund.

.11 Approved Entities.

A. General. The Department may approve an entity to originate and administer financial assistance in accordance with this chapter.

B. To be eligible to administer a financial assistance program, the entity shall submit an application to the Department and meet the following minimum criteria to the satisfaction of the Department:

(1) Provide evidence satisfactory to the Department supporting the entity's demonstrated ability to:

(a) Manage a performing portfolio of business loans;

(b) Evaluate applications for financial assistance, underwrite loans, and administer financial assistance programs;

(c) Leverage Program proceeds with other private or public sources of funding;

(d) Comply with Program statutes, regulations, guidelines, and policies;

(e) Provide adequate resources and staff to implement the Program, including staff trained to efficiently:

(i) Process loan applications, draw schedules, and other loan documentation;

(ii) Evaluate loan portfolio performance; and

(iii) Monitor the work performed with the Program proceeds;

(f) Provide substantive technical assistance to recipients of financial assistance;

(g) Obtain coverage by a fidelity bond or employee dishonesty liability insurance as determined by the Department; and

(h) Be duly organized and in good standing in the State of Maryland; and

(2) Provide audited financial statements that demonstrate the entity's ability to maintain consistent:

(a) Revenues;

(b) Operating reserves;

(c) Net assets;

(d) Unrestricted assets; and

(e) Portfolio delinquency rates.

C. An approved entity shall execute and comply with the terms of an administration agreement, loan agreement, loan note, assignment, and other documents governing the duties of the entity under the Program, as required by the Department.

D. An approved entity shall be directly responsible for fulfilling all of its duties and responsibilities under the Program and may not

assign its responsibilities without the prior written consent of the Department.

E. The Department may monitor an approved entity's administration of loans funded by the Department, and may enforce its remedies under the Program loan documents, including revoking the entity's approval to administer a loan program under this chapter.

F. Other Requirements.

(1) An approved entity shall:

(a) Maintain financial records of Program proceeds for at least 5 years, and shall make them available for review by the Department at all reasonable times; and

(b) Provide the Department with periodic reporting on:

- (i) Loan disbursements to loan borrowers; and
- (ii) Other information required by the Department.

(2) Upon notice to an approved entity, and during normal business hours, the Department may inspect the files of an approved entity relating to any loans originated under the Program.

G. To fund financial assistance under this regulation the Department may:

(1) Directly fund the financial assistance that is originated by an approved entity;

(2) Provide financial assistance to an approved entity for the purpose of the approved entity making the financial assistance to another entity;

(3) Purchase or commit to purchase from approved entities any form of financial assistance that meets the requirements of this chapter; and

(4) Enter into agreements with approved entities to collectively lend money on a project that meets the requirements of this chapter.

.12 Nondiscrimination and Drug-Free and Alcohol-Free Workplace.

A. An applicant or contractor may not discriminate on the basis of race, color, religion, national origin, sex, marital status, physical or mental disability, sexual orientation, or age, except with regard to age as permitted under the federal Housing for Older Persons Act, as amended from time to time, or other similar federal laws, in leasing or otherwise providing dwelling accommodations or in any other aspect of the development, administration, or operation of any project or undertaking financed or assisted under the Program, or in any aspect of employment by any sponsor, developer, or contractor in the construction, repair, or maintenance of any property financed or assisted under the Program.

B. An applicant or contractor shall comply with all applicable federal, State, and local laws and Departmental policies and programs regarding discrimination, equal opportunity in employment, housing, and credit practices, and drug and alcohol free workplaces, including:

(1) Title VI and VII of the Civil Rights Act of 1964, as amended;

(2) Title VIII of the Civil Rights Act of 1968, as amended;

(3) The Fair Housing Amendments Act of 1988, as amended;

(4) The Department's Minority Business Enterprise Program, as amended;

(5) Executive Order 01.01.1989.18, Drug and Alcohol Free Workplace, and any Department or State regulations adopted or to be adopted to carry out the requirements of that Order;

(6) State Government Article, Title 20, Annotated Code of Maryland, as amended; and

(7) The Americans with Disabilities Act of 1990, as amended.

C. Covenants implementing these requirements, including affirmative action measures, shall be included in appropriate agreements between the Department and other parties.

.13 Waiver.

The Secretary may waive or vary provisions of these regulations to the extent that the waiver or variance is consistent with the Act and if, in the written determination of the Secretary, the application of a regulation in a specific case or in an emergency situation would be inequitable or contrary to the purposes of the Act.

.14 False Statements.

A. A person may not knowingly make or cause to be made a false statement or report in any document required to be furnished to the Department by an agreement relating to financial assistance.

B. A person applying for or benefiting from financial assistance under the Program may not knowingly make or cause to be made a false statement or report for the purpose of influencing the action of the Department on an application or for the purpose of influencing the action of the Department affecting financial assistance already provided.

C. A person who violates §A or B of this regulation is:

(1) Subject to immediate cancellation or acceleration of the form of financial assistance provided by the Program; and

(2) Guilty of a misdemeanor and upon conviction is subject to a fine not exceeding \$50,000, or imprisonment not exceeding 5 years, or both.

KENNETH C. HOLT

Secretary of Housing and Community Development

Title 08 DEPARTMENT OF NATURAL RESOURCES

Subtitle 02 FISHERIES SERVICE

08.02.01 General

Authority: Natural Resources Article, §§4-205.1, 4-602, and 4-11A-02, Annotated Code of Maryland

Notice of Proposed Action
[19-131-P]

The Secretary of Natural Resources proposes to amend Regulation .16 under COMAR 08.02.01 General.

Statement of Purpose

The purpose of this action is to clarify the documentation requirements for out-of-State finfish suppliers.

Some suppliers have indicated reluctance to apply as an out-of-State supplier due to the wording in the current regulation. The current language requires that a person submit all fish health testing documentation for viral, bacterial, protozoan, or parasitic infections so that the Department may determine if the finfish to be stocked in Maryland waters pose an unacceptable risk to native or naturalized aquatic resources.

While the application for the permit describes what the required fish health testing documentation comprises, some suppliers are concerned because the regulation states that they shall "submit all fish health testing documentation." Some suppliers believe the wording of the regulation could result in legal liability for them if they do not provide every single document that they possess relating to fish health testing. The proposed action clarifies the requirement by changing the terminology of the regulation from "all" to "required" documentation. Making this change is beneficial for all parties involved.